



## **ANNUAL REPORT**

### **TO THE GOVERNOR AND THE LEGISLATURE**

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#### **WHISTLEBLOWER RETALIATION COMPLAINTS** COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES

January 1, 2003, through December 31, 2003

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Prepared By The

#### **STATE PERSONNEL BOARD**

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**June 2004**



**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE  
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY  
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

**June 30, 2004**

**Introduction**

Government Code section 19683(f) provides, "In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigation of reprisals or retaliation for the disclosure of information by public employees, the Board, by June 30 of each year<sup>1</sup>, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section." This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2003, through December 31, 2003.

**Background**

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

The law was amended in 1987 and changed to include the requirement that a complaint of improper governmental activity be filed with the Joint Legislative Audit Committee before being filed with the SPB; that the complaint be filed with the SPB within 12 months of the most recent act of reprisal; and that any person who intentionally engages in acts of reprisal be subject to a fine not to exceed \$10,000 and imprisonment in the county jail for a period of one year as determined by the courts. The changes included the requirement of an annual report from SPB to the Governor and the Legislature on complaints of whistleblower retaliation.

Effective January 1, 2000, the law was again amended to expand the protections granted to whistleblowers. The requirement for filing such complaints first with the Joint Legislative Audit Committee was deleted. The amendments make it easier for a whistleblower to file a complaint and include, as protected disclosure, the refusal to obey an illegal order. The amendments also change the burden of proof in adverse actions. If any employee subject to adverse action demonstrates that their whistleblowing activity was a contributing factor in the appointing power's bringing the action, the burden is imposed upon the appointing power to prove by clear and convincing

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<sup>1</sup> Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001 and 2002.

evidence that it would have brought the action even if the employee had not blown the whistle.

In the year 2001, the SPB added a “Frequently Asked Questions” (FAQs) section on whistleblower appeals to our Internet web site at the appeals home page.

In the year 2002, the SPB drafted, with input from interested parties, regulations to implement the whistleblower laws. SPB added sections 56 through 56.2 to Title 2, California Code of Regulations in order to facilitate this. The regulations, operative August 14, 2002, codified the process for filing, processing, hearing, and deciding complaints of whistleblower retaliation in state service. Additionally, the regulations are designed to inform complaining and responding parties of the standards and procedures utilized by SPB in processing whistleblower retaliation complaints, including the ability of the parties to conduct discovery, to respond to the allegations, and the time frame for the Executive Officer to issue a Notice of Findings concerning the complaint. The regulations are also intended to inform the parties which disciplinary actions may be taken against individuals found to have engaged in impermissible retaliation.

### **Information**

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG) and the SPB.

BSA accepts complaints in reference to improper governmental activities. BSA is the investigative agency and has jurisdiction to investigate the underlying improper governmental activity.

OIG’s specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG can, with the approval of the complaining employee, forward its investigative findings to the SPB in support of the complaining employee’s request and ask the SPB to bring disciplinary action against employees who retaliate against whistleblowers if the department does not. An independent agency, OIG reports to the Governor. As a result of the audits, reviews, and investigations, OIG provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides disciplinary appeals. SPB accepts the appeal of the state civil service or community college employee or applicant who believe s/he has been subjected to improper personnel action, threatened with an improper personnel action, or that such action is based, in part, on the fact s/he disclosed improper governmental activity or disclosed a refusal to obey an illegal order or directive.

## Complaint Activity

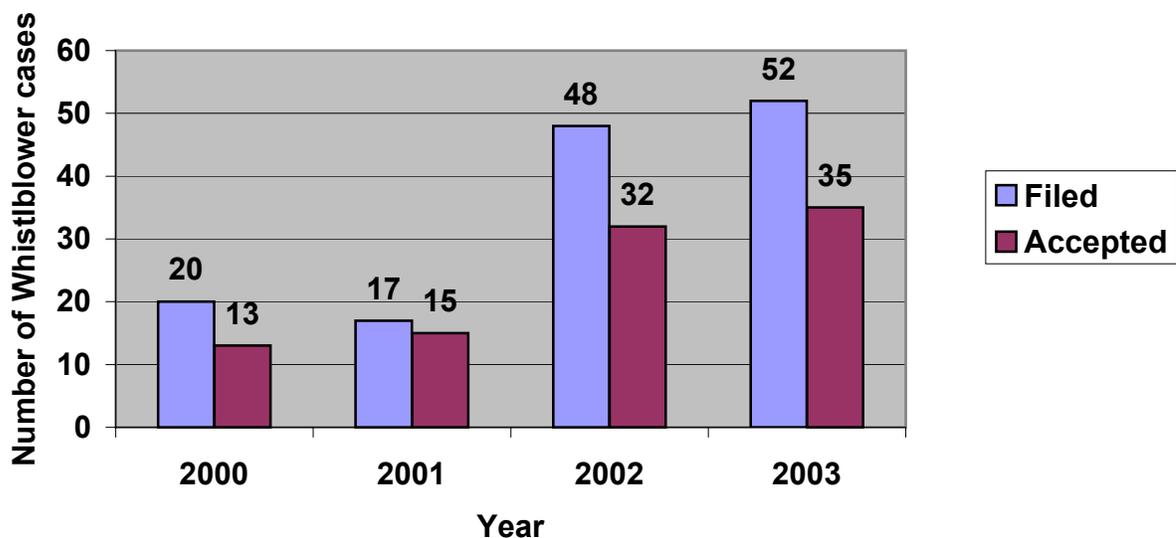
### I. Whistleblower Appeals filed Between January 1, 2003 and December 31, 2003

| Total Filed | Appeals Not Accepted <sup>2</sup> | Appeal Withdrawn | Appeals Accepted |
|-------------|-----------------------------------|------------------|------------------|
| 52          | 14                                | 3                | 35               |

### II. Disposition of Whistleblower Appeals Accepted Between January 1, 2003 and December 31, 2003

| Granted | Denied | Stip Approved | Pending Decision | Total |
|---------|--------|---------------|------------------|-------|
| 0       | 22     | 1             | 12               | 35    |

### III. Comparison of Whistleblower Appeals filed each year



<sup>2</sup> Appeals Not Accepted - Filed appeals are considered not accepted when (a) there is a No Grounds/No Prima Facie Case; (b) the complainant failed to provide required information timely after the State Personnel Board's request of same (No Timely Response); or (c) there is no jurisdiction. The State Personnel Board is considered to have jurisdiction in Whistleblower Retaliation cases when all of the requirements listed below are met:

- \* A perjury statement is included with the complaint.
- \* The appeal is filed within one year of the most recent act or reprisal.
- \* The complaint is filed by a state or community college applicant or employee.
- \* The complaint states a prima facie case of retaliation

## Detailed Listing of Complaints Filed in the Calendar Year 2003

|    | AppealDate | Case #   | Status  | Department                                     | Consolidated <sup>3</sup> | RTFC <sup>4</sup> |
|----|------------|----------|---|--|---------------------------|-------------------|
| 1  | 01/07/03   | 03-0028  | Deny - Notice of Finding                            | Industrial Relations                           | N                         | N                 |
| 2  | 01/13/03   | 03-0030  | Appeal not accepted                                 | Corrections - Personnel                        | N                         | N                 |
| 3  | 01/17/03   | 03-2090  | Deny - Notice of Finding                            | Consumer Affairs                               | N                         | Y                 |
| 4  | 02/03/03   | 03-0269  | Deny - Notice of Finding                            | Transportation                                 | N                         | Y                 |
| 5  | 02/25/03   | 03-0487  | Appeal not accepted                                 | Corrections - Personnel                        | N                         | N                 |
| 6  | 03/03/03   | 03-0598  | Deny - Notice of Finding                            | Health Services                                | N                         | Y                 |
| 7  | 03/06/03   | 03-2962  | Appeal not accepted                                 | Fish and Game                                  | N                         | N                 |
| 8  | 03/13/03   | 03-0643E | Stipulation Approved                                | Transportation                                 | Y-AA                      | Y                 |
| 9  | 03/20/03   | 03-0722  | Appeal not accepted                                 | Transportation                                 | N                         | N                 |
| 10 | 03/24/03   | 03-0726  | Appeal not accepted                                 | Corrections - Personnel                        | N                         | N                 |
| 11 | 03/25/03   | 03-2103  | Deny - Notice of Finding                            | Consumer Affairs                               | N                         | N                 |
| 12 | 03/26/03   | 03-0741  | Deny - Notice of Finding                            | Consumer Affairs                               | N                         | N                 |
| 13 | 04/01/03   | 03-0777E | Pending Decision - Off Calendar-appellant's request | Prison Industry Authority                      | N                         | Y                 |
| 14 | 04/07/03   | 03-0961  | Pending Decision Set for Hearing                    | Comm - Southwestern Community College District | N                         | Y                 |
| 15 | 04/09/03   | 03-0914  | Appeal not accepted                                 | Corrections - Personnel                        | Y-AA                      | Y                 |
| 16 | 04/17/03   | 03-1075E | Deny - Appellant no show                            | Housing and Community Development              | Y-AA                      | N                 |
| 17 | 04/18/03   | 03-2091  | Appeal not accepted                                 | Equalization                                   | N                         | N                 |
| 18 | 04/29/03   | 03-1109  | Deny - Notice of Finding                            | Transportation                                 | N                         | N                 |
| 19 | 05/01/03   | 03-1123  | Deny - Notice of Finding                            | Developmental Services                         | N                         | Y                 |

<sup>3</sup> AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action Appeal

DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint

RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint

All such consolidated cases are brought before an Administrative Law Judge for an evidentiary hearing

<sup>4</sup> RTFC: indicates whether complainant sought adverse action against individually named respondent(s)

## Detailed Listing of Complaints Filed in the Calendar Year 2003

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|----|------------|----------|------------------------------|---|---------------------------|-------------------|
| 20 | 05/03/03   | 03-1133  | Pending Decision             | Comm -<br>Rancho<br>Santiago<br>Community<br>College District | N                         | Y                 |
| 21 | 05/06/03   | 03-1175  | Deny - Notice of Finding     | Developmental<br>Services                                     | N                         | N                 |
| 22 | 05/09/03   | 03-1174  | Deny - Notice of Finding     | Youth Authority   | N                         | Y                 |
| 23 | 05/13/03   | 03-1193  | Appeal not accepted          | Corrections -<br>Personnel                                    | N                         | N                 |
| 24 | 05/13/03   | 03-1246E | Appeal Withdrawn             | Transportation  | Y-AA                      | N                 |
| 25 | 05/13/03   | 03-1224  | Pending Decision             | Corrections -<br>Personnel                                    | N                         | Y                 |
| 26 | 05/13/03   | 03-1255  | Pending Decision             | Corrections -<br>Personnel                                    | N                         | Y                 |
| 27 | 06/06/03   | 03-1496P | Deny - Notice of Finding     | Water<br>Resources<br>Control Board                           | N                         | Y                 |
| 28 | 07/02/03   | 03-1888  | Appeal not accepted          | Statewide<br>Health Planning<br>& Development                 | N                         | Y                 |
| 29 | 07/03/03   | 03-1910  | Pending Decision             | Motor Vehicles  | N                         | Y                 |
| 30 | 07/18/03   | 03-2052  | Deny - Notice of Finding     | Transportation  | N                         | Y                 |
| 31 | 07/23/03   | 03-2104  | Deny - Notice of Finding     | Corrections -<br>Personnel                                    | N                         | Y                 |
| 32 | 07/24/03   | 03-2095  | Pending Decision/Stipulation | Dept of Justice   | Y-AA                      | Y                 |
| 33 | 07/28/03   | 03-2158  | Appeal not accepted          | Mental Health   | N                         | N                 |
| 34 | 07/29/03   | 03-2194  | Appeal not accepted          |   | N                         | N                 |
| 35 | 08/08/03   | 03-2773  | Appeal not accepted          | CSU - Cal State<br>University                                 | n/a                       | N                 |
| 36 | 09/08/03   | 03-2627  | Appeal Withdrawn             | Exposition and<br>State Fair                                  | N                         | N                 |
| 37 | 09/09/03   | 03-2701  | Appeal Withdrawn             | General<br>Services   | N                         | Y                 |
| 38 | 09/15/03   | 03-2699  | Pending Decision             | Corrections -<br>Personnel                                    | N                         | Y                 |
| 39 | 09/16/03   | 03-2660  | Deny - Notice of Finding     | Corrections -<br>Personnel                                    | N                         | N                 |

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All such consolidated cases are brought before an Administrative Law Judge for an evidentiary hearing

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|    |          |          |                                     |   |              |   |
|----|----------|----------|-------------------------------------|---|--------------|---|
| 40 | 09/16/03 | 03-2792  | Pending Decision<br>Set for Hearing | Corrections -<br>Personnel                    | N            | Y |
| 41 | 09/23/03 | 03-2757  | Deny - Notice of Finding            | Corrections -<br>Personnel                    | N            | Y |
| 42 | 10/02/03 | 03-2816  | Appeal not accepted                 | Corrections -<br>Personnel                    | N            | N |
| 43 | 10/03/03 | 03-2819  | Deny - Notice of Finding            | Corrections -<br>Personnel                    | N            | Y |
| 44 | 10/17/03 | 03-2961  | Deny - Notice of Finding            | Corrections -<br>Personnel                    | Y-AA         | N |
| 45 | 10/22/03 | 03-2996  | Deny - Notice of Finding            | Social Services                               | N            | N |
| 46 | 10/27/03 | 03-3060  | Deny - Notice of Finding            | Social Services                               | N            | Y |
| 47 | 11/04/03 | 03-3176  | Pending Decision                    | Corrections -<br>Personnel                    | N            | Y |
| 48 | 11/18/03 | 03-3227  | Deny - Notice of Finding            | Statewide<br>Health Planning<br>& Development | N            | Y |
| 49 | 11/28/03 | 03-3381E | Pending Decision<br>Off Calendar    | Veterans Affairs                              | Y-DC, RA, AA | Y |
| 50 | 12/01/03 | 03-3385E | Pending Decision<br>Set for Hearing | Franchise Tax<br>Board                        | Y-DC         | Y |
| 51 | 12/02/03 | 03-3450  | Deny - Notice of Finding            | Corrections -<br>Personnel                    | N            | N |
| 52 | 12/03/03 | 03-3487  | Appeal not accepted                 | CSU - Cal State<br>University                 | n/a          | Y |

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